



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0384; FRL-9935-22-Region 4]

Approval and Promulgation of Implementation Plans; Kentucky:

New Sources in or Impacting Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the Commonwealth of Kentucky's September 23, 2011, State Implementation Plan (SIP) revision, submitted through the Kentucky Division for Air Quality (KY DAQ), which modifies the SIP by making changes to Kentucky regulation, "*Review of new sources in or impacting upon nonattainment areas.*" EPA has determined that Kentucky's requested SIP revision meets the applicable provisions of the Clean Air Act (CAA or Act) and EPA regulations regarding Nonattainment New Source Review (NNSR) permitting.

DATES: This rule is effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0384. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e.,

Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Farngalo can be reached by telephone at (404) 562-9152 and via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 2011, KY DAQ submitted a SIP revision to EPA for approval that makes several changes to Kentucky's regulations at 401 Kentucky Administrative Regulations (KAR) 51:052, *Review of new sources in or impacting nonattainment areas*. These regulations establish air quality permitting requirements for the construction or modification of major

stationary sources located within, or impacting upon, areas designated nonattainment for any primary national ambient air quality standard. To ensure improvement of air quality in those areas, the emissions resulting from construction or modification of a major stationary source must be offset with compensating emission reductions.

Kentucky's requested SIP revision would revise 401 KAR 51:052 by: (1) changing Section 5, paragraph (6)(b) to authorize new or modified sources to offset their emission increases with emission reductions achieved by shutting down an existing unit or curtailing production or operating hours prior to the new source application date (if specified conditions are met), (2) adding new and more comprehensive language to Section 5, paragraph (6)(b) describing how to calculate offsetting emission reductions obtained from a source shutdown or curtailment (3) amending Section 4, paragraph (3)(a) to establish an offset ratio of at least 1:1 for pollutants other than volatile organic compounds and nitrogen oxides , and (4) making changes to the introductory paragraph to 401 KAR 51:052 and Section 5, paragraph (3)(e) that update and clarify these provisions.

In a notice of proposed rulemaking (NPR) published on August 11, 2015, EPA proposed to approve Kentucky's revisions to 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas* revisions. See 80 FR 48051. The details of Kentucky's submittal and the rationale for EPA's action are provided in the NPR. EPA did not receive any relevant comments on the proposed action.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of

Kentucky Rule 401 KAR 51:052 entitled “*Review of new sources in or impacting nonattainment areas*,” which became effective in the Commonwealth of Kentucky on August 4, 2011. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the Region 4 office (see the ADDRESSES section of this preamble for more information).

III. Final Action

EPA is taking final action to approve the Commonwealth of Kentucky’s September 23, 2011, SIP revision. EPA has determined that the changes to Kentucky’s Rule 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas*, are approvable because they are consistent with CAA section 110 and EPA’s regulations regarding NNSR permitting at 40 CFR 51.165.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial

direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: September 24, 2015.

Heather McTeer Toney

Regional Administrator,
Region 4.

40 CFR parts 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S – Kentucky

2. In § 52.920, table 1 in paragraph (c) is amended under Chapter 51 by revising the entry for “401 KAR 51:052” to read of follows:

§ 52.920 Identification of plan.

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(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
**	**	**	*	
401 KAR 51:052	Review of new sources in or impacting nonattainment areas	8/4/2011	[Insert date of publication] [Insert Federal Register citation]	
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[FR Doc. 2015-25575 Filed: 10/7/2015 08:45 am; Publication Date: 10/8/2015]